

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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RICHARD MICHAEL SELLERS,

07-Civ-7000 (SHS)

Plaintiff,

ORDER

-against-

C.O. BRIAN COSTELLO #335,

Defendant.

-----x  
SIDNEY H. STEIN, U.S. District Judge.

Pro se plaintiff Richard Sellers originally filed the complaint in this action on August 6, 2007. The Court then referred the action to Magistrate Judge James C. Francis for general pretrial purposes. On November 22, 2007, plaintiff wrote the Clerk of Court that the packet of materials related to service that had previously been sent to him by this Court's pro se office had been misplaced by correctional officers at the facility where he was incarcerated and he was therefore requesting an extension of time to serve the summons and complaint on defendant Brian Costello. In response, Magistrate Judge Francis granted that request, extending plaintiff's time to effect service until January 31, 2008. In addition, the Court's pro se office sent plaintiff a replacement package of the service materials.

On February 19, 2008, almost three weeks after the extended deadline for service expired, Judge Francis, having received no indication that service was complete, issued a

Report and Recommendation (“R&R”) recommending that this action be dismissed without prejudice on the ground that plaintiff had failed to serve timely the summons and complaint. This Court adopted the R&R on March 7, 2008 and dismissed the complaint without prejudice pursuant to Fed. R. Civ. P. 4(m).

On March 18, 2008 plaintiff wrote the Court seeking reconsideration of the March 7 order of dismissal. In his letter, plaintiff states that the reason he did not effectuate service was that he had been moved between several correctional facilities. He also acknowledges that he had earlier received the replacement packet of materials to effectuate service around December 21, 2007. Plaintiff asserts that “around the end of January,” he was required to spend time at a different correctional facility and complains that Magistrate Judge Francis’ February 19, 2008 R&R and this Court’s March 7, 2008 order adopting the R&R did not reach him at the Washington Correctional Facility (where he is now incarcerated) until recently.

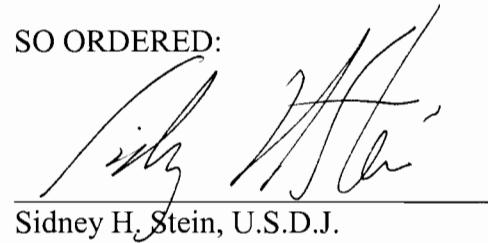
While plaintiff’s letter may put forth circumstances that would explain why he failed to object timely to Magistrate Judge Francis’ February 19, 2008 R&R, see Fed. R. Civ. P. 72(b)(2) (requiring a litigant to object to a magistrate judge’s report and recommendation within ten days of service), it does not present any reason to disturb this Court’s order dismissing the complaint. Plaintiff has already been the beneficiary of one extension of the time limit for serving the summons and complaint. Further, plaintiff does not explain why he was unable to have service effectuated during the approximately four to five weeks between his receipt of the replacement pro se packet around December 21, 2007 and “the end of January” 2008 when he was required to relocate.

Accordingly, plaintiff’s motion for reconsideration is denied and the March 7

order dismissing the complaint without prejudice remains in effect.

Dated: New York, New York  
May 2, 2008

SO ORDERED:

A handwritten signature in black ink, appearing to read "Sidney H. Stein".

Sidney H. Stein, U.S.D.J.